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COORDINATING COMMITTEEREPORT TO THE CONSULTATIVE GROUP

FOR EXCON

BY THE CHAIRMAN

OF THE COORDINATING COMMITTEECOVERING THE PERIOD 6th May 1953 - 6th March 1954.CONTENTS

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12. In accordance with paragraphs 51 and 52 of Consultative Group Paper XI, various matters in the field of export controls were given further study by the Coordinating Committee and by the Sub-Committee on Export Controls, as reported below.

(a) Transshipment Controls

References : COCOM Docs. 1246, 1260, 1262, 1265, 1266, 1268, 1289, 1315, 1335, 1346, 1367, 1386; Sub-C(53) 44 and 45.

13. On the 5th and 6th June 1953 (see COCOM Doc. 1246), the Coordinating Committee examined and approved the Report by the Chairman of the Sub-Committee on Transit Control (COCOM Doc. Sub-C(53) 44) to which were appended the revised text of the Transit Authorisation Certificate Scheme proposed by the German and Netherlands Delegations (Appendix I); together with a List of the items selected for Transshipment Control (Appendix II)*; and a draft text for a Transit Authorisation Certificate (Appendix III)**.

14. Replies to questions as to the proposed Transit Authorisation Scheme which had been raised in COCOM Sub-C(53) 44, para. 15 (iv) and (v), were given in COCOM Docs. 1260, 1262, 1265, 1266 and 1268 by Germany, Denmark, the United States, Canada, and Japan. Other Delegations submitted oral replies during the Committee's meeting on the 29th June (see COCOM Doc. 1289, para. 2). Some Governments qualified their answers by expressing a preference for other methods of transshipment control; the Italian Government formulated a reservation unless Participating Countries extended the controls to cover their dependent overseas territories, at least in the Mediterranean area (COCOM Doc. 1289, paras. 17 - 21; see also Docs. 1315, paras. 1 - 6; 1346, para. 3; 1367, paras. 6 - 12, and 17); and the United Kingdom entered a general reservation on the acceptability of the Transit Authorisation scheme in its entirety.

15. During the discussion on the 29th June, the United Kingdom Delegation provoked debate as to whether penalties would be inflicted by countries applying the scheme, in the event of their residents making false declarations in transit documents as to the destination of the goods; and also as to whether goods would be stopped if there were - as opposed to a statement or knowledge to that effect - a mere suspicion that goods might reach an undesirable destination (COCOM Doc. 1289, paras. 4 - 7; and 8 - 12).

16. The Netherlands Delegation, who reserved their position regarding extension of the scheme to cover suspected diversions, asked what action would be taken on suspicion by countries already operating a transshipment licensing control. The interested Delegations stated that normal export licensing procedure would apply. In Canada, Denmark, Italy and Norway, it was pointed out, special treatment would be applicable as far as concerned goods on a Through Bill of Lading. Should this circumstance provoke an increase in the use of Through Bills of Lading after introduction of the Transit Authorisation scheme, and thus - as feared by the Netherlands Delegation - open a dangerous loophole in the net of control - the Delegations concerned gave assurances that their Governments would reconsider the situation (COCOM Doc. 1289, paras. 13 - 16).

* See also COCOM Docs. 1289, para. 23, and Appendices A & B; 1335, paras. 1 - 6 (on Munitions and Atomic Energy Items), and Appendix A; 1346, paras. 4 - 7; 1367, paras. 13 - 17. ** See also COCOM Doc. 1289, para. 31.

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17. The United Kingdom suggestion that the scope of the Transit Authorisation scheme be widened so as to cover suspected diversions was debated more fully on later occasions, in association with the Netherlands and Belgian reservations thereto (see COCOM Doc. 1314, para. 7 - 13; and 1346). The Netherlands delegation, in this connection, gave assurances on the 11th August that their ports would not be allowed to become loopholes in any agreed transit control scheme (COCOM Doc. 1314, para. 11).

18. On the 9th September, the United Kingdom Delegation stated that their Government did not wish to press this issue, but would keep a full watch on the way in which the scheme worked in practice (COCOM Doc. 1346, para. 2).

19. The question of the possible participation of Third Countries (COCOM Doc. 1216, paras. 8(d) and 9), was referred to Governments, and the suggestion was made that it would be advisable to begin by clarifying the position of several Third Countries as to the IC/DV system (see COCOM Doc. 1314, para. 64; and 1346, para. 2).

20. In the course of debate on the 29th September, delegations replied to questions by the United Kingdom Delegation concerning the public statements which might have to be made by their Governments upon introduction of the scheme. The Italian Delegation submitted a proposal that Governments with no transshipment controls should accept the Transit Authorisation scheme as an interim measure. Several Delegations, however, reaffirmed that their acceptance of this scheme must be conditional on the adoption of financial or transaction controls by all Participating Governments (see COCOM Docs. 1346, para. 3; 1367, paras. 6 - 10). A French proposal that Transit Authorisation certificates should be required by Participating Countries in respect of all exports to the Soviet Bloc was not accepted, but it was suggested that any specific questions which the French Delegation might wish to raise as to items on the list could be studied by a working party attended by representatives of interested Governments. With this proviso, and subject to the Italian reservation on the question of dependent overseas territories - which the Italian Delegation had to be able to lift when the United Kingdom reply was received - it was considered that the details of the Transit Authorisation scheme had been clarified sufficiently for the Committee to be able to accept it more or less immediately if and when all members signified their acceptance of the Transit Authorisation scheme and of transaction controls (see COCOM Doc. 1367, para. 17).

(b) Financial and Transaction Controls

References : COCOM Docs. 1246, 1267, 1281, 1289, 1310, 1315, 1367, Sub-C(53) 44 and 45.

21. It was noted at the outset of the discussions on these matters that, with the exception of Canada, the United Kingdom and the United States, some form of financial or transaction controls were adopted by all Participating Governments.

22. On the 2nd May 1964, during the eighth meeting of the COCOM, the Coordinating Committee examined and accepted the Report of the Chairman of the Sub-committee on Financial Control (COCOM Doc. 1314, para. 14) which reported that the position of the United Kingdom and other delegations considered that it was desirable for the Committee to accept the scheme as proposed, and to draw up a list of countries which were likely to accept it, and that the United Kingdom delegation had given assurances that its ports might not be used as a loophole in any agreed transit control system. The report also gave the following information on the financial control position of each delegation, and indicated the date when each delegation intended to indicate its acceptance of the scheme.

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1. The Coordinating Committee accordingly invited Governments (COCOM Doc. 1246, para. 8) to make known their views as to the lists of items which should be subject to transit, financial and transaction controls; and also as to a tentative date for the introduction of transshipment controls - bearing in mind the need to introduce transaction controls at approximately the same time.

2. The Canadian Delegation, in their reply (COCOM Doc. 1267) said that the Canadian Government didn't wish to participate in transaction controls unless absolutely necessary in the interests of unanimity within the Coordinating Committee.

25. The United States delegation, in COCOM Doc. 1281, dated 27th June 1953, transmitted the text of a new United States Regulation on transaction controls, which was to come into force two days later. The Committee were informed that the relevant press release would state that the new regulation supplemented the export control laws and "would prevent persons within the United States from participating in outside shipments of strategic goods to the Soviet Bloc, which would be inconsistent with security export controls". (Participating Countries were asked on the 7th August 1953 - COCOM Doc. 1310 - to assist the United States Government in their enforcement of these new controls by providing any available information as to "possible United States participation in transactions inconsistent with these regulations.")

26. The Belgian, French and Netherlands Delegations, at the meeting on 29th June 1953, made their acceptance of the Transit Authorisation Scheme conditional upon the abolition of Financial or Transaction Controls by all Participating Governments (COCOM Doc. No. 1289, para. 2).

27. In reply to a question from the Netherlands Delegate, the United Kingdom Delegate said that, in his Government's view, transaction controls would be supplementary to physical transshipment controls, which they regarded as the principal means of preventing diversions; they would therefore regard as appropriate for Transaction Controls any list accepted by all Participating Governments for Transshipment Control. The Netherlands Delegate expressed disappointment: the probable reaction of his Government in the event of such a limitation by the United Kingdom Government would be, he thought, to limit to the same short list their own financial controls, which, for several years, had covered the whole export list.

28. The Belgian Delegate associated himself with the Netherlands statement.

29. The Committee were unable to reach agreement as to the coverage of the list of items to be made subject to Financial and Transaction Controls (COCOM Doc. 1289, para 32 (d)).

30. On the 11th August, Delegations stated that their Governments' positions remained unchanged. In the United Kingdom, it was stated, Ministers would wish to see the scheme for Transit Authorisations, Financial and Transaction controls in its final form before taking their decision: as regards the latter, certain difficulties had been encountered and remained unresolved (COCOM Doc. 1315, paras. 19 and 20.)

31. On the 29th September (COCOM Doc. 1367) the United Kingdom Delegate stated that the introduction of a Transit Authorisation Scheme and Transaction Controls in his country raised major problems of policy, and that time and study were required before the final steps could be taken. A statutory instrument would have to be laid before Parliament, and debate would be probable. He asked the Committee to confirm that the financial controls of Western European Governments were applied to transactions in strategic goods, and enquired whether, if that were the case, there would be objection to Ministers in the United Kingdom making

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a public statement to that effect. The replies received indicated that, although all Western European Governments had exercised such controls, it was doubtful whether public reference had been made in most countries to the strategic aspect of the controls. It was pointed out that the Positive List of matters freely disclosable by Governments included financial controls, although Governments could not say that these controls were for strategic purposes.

32. The Committee suggested that the point could be met by a statement to the effect that all other interested Governments had financial or transaction controls in force, and since the scope of these controls was wide, it could be assumed that they covered transactions in strategic items. The United States Deleg ate said that there would be no objection to reference being made to United States transaction controls, which were public knowledge.

33. The Greek Deleg ate informed the Committee that, for exchange control purposes, the very few transit transactions which took place in Greek harbours were subject to licence (COCOM D.c. 1367, para. 12).

34. As noted in the present report under the heading of Transaction Controls, the Committee were unable to make further progress since unanimous agreement could not be reached until all Deleg ations had signified their decision to adopt Transaction Controls (see above, Chapter IV, Section (a)).

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IV EXPORT CONTROLS (contd.)(c) Import Certificate/ Delivery Verification Scheme

References : COCOM Docs. 1207, 1214 Revised, 1215, 1218, 1224, 1229, 1230, 1232/1336, 1344, 1369, 1373 and Annexes, 1386, 1395; 1279 Sub-C(53) 54 and Addendum, Docs. 1460, 1470, 1478, 1485, 1500, 1505, 1513, 1517.

35. During the period under review, the Coordinating Committee and its Sub-Committee on Export Controls devoted a considerable number of meetings to the IC/DV system. In examining the system, and in making recommendations for measures to strengthen its effectiveness and make its application more uniform, the Committee and the Sub-Committee were assisted by experts of Member Governments who came to Paris on several occasions. The major results of the Committee's deliberations are briefly summarised below :

36. Responsibilities of Exporting and Importing Governments

The Committee affirmed that the primary responsibility for the security of strategic exports rests with the Government issuing the export licence, and that in normal circumstances the IC/DV system provides a means of simplifying the task of the exporting Government in discharging its responsibility. The Committee adopted a statement briefly outlining the respective responsibilities of both the exporting and importing Governments under the scheme, and defining the practical consequences of these responsibilities. The Committee also made a recommendation relating to the special case of "triangular" transactions. (See COCOM Docs. 1279, para. 12; Sub-C(53) 54, paras. 3 - 5; 1485, para. 2(a); and 1517, para. 45. See also below, para. 42).

37. Coverage of the Import Certificate Scheme

Following extensive discussion, and consideration of special problems raised by several Delegations, the Committee reached the following agreement :

"With the exception of cases where Participating Governments had received all necessary guarantees as to end-use of the strategic goods for which export licences had been requested, Governments should require Import Certificates and Delivery Verification forms to be produced for all items on the Munitions List and International Lists I and II. Import Certificates might also be called for in respect of items which, owing to "marginal differences" in definition between national lists, and the International Lists (see para. 13 of COCOM Doc. 1517), did not appear to be covered by the latter. Import Certificates need not be required in respect of List I items when quantities were so small and the nature of the goods was such that the Government were satisfied that the consignment did not constitute a security risk." (See COCOM Doc. 1517, paras. 7 - 20).

38. Coverage of the Import Certificate Scheme with Respect to Hong Kong and Macau

Subject to the special position of the Danish Government on the matter of implementation, the Committee noted that all Participating Governments were making use of the IC/DV scheme in the case of all exports of items on International Lists I, II and III and the China Special List to Hong Kong and Macau (COCOM Prc. Sub-C(53) 54; and Doc. 1485, paras. 5 - 7).

39. Methods of Transmitting Import Certificates and Delivery Verifications

The Committee considered various proposals designed to strengthen the system providing for Government-to-Government exchange of Import Certificates and Delivery Verification forms in order to reduce the risk of forged documents and fraud. With respect to Import Certificates it was

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Decided to introduce a system whereby the original copy of the Import Certificate would continue to be transmitted via normal commercial channels, but in addition the Government issuing the Import Certificate would send a second copy directly to the importing Government in order to provide verification as to the authenticity of the original. Various practical details of the scheme such as periodicity of transmittal and time limits for receipt of the extra copy by the exporting Government were also considered, and in some cases are still being discussed at the date of this report. The Committee recommended that the exchange should begin on April 1st 1954, or earlier if individual Governments so desired. It was understood that dependent overseas territories would also utilise the scheme. With respect to third countries co-operating in the IC/DV system, it was agreed that they should be invited to take part in the Government-to-Government exchange after Participating Governments had had some experience in its operation.

40. On the question of transmitting Delivery Verification forms through official channels, the Committee also decided that the matter could be reconsidered later in the light of experience gained in the operation of the Governmental exchange of Import Certificates (see COCOM Sub-C(53) 54, paras. 14 and 17; Docs. 1460, para. 3; 1500, paras. 2 - 10, 11, 13, 14 and 16; 1513; 1517, paras. 2 - 24, and 42 - 44).

41. Format and Content of Import Certificates and Delivery Verification forms.

The Committee considered and reached agreement on a large number of specific recommendations concerning the technical format and content of Import Certificates and Delivery Verification forms. These included such things as the title, numbering, dating and method of certifying documents. (COCOM Sub-C(53) 54, para. 13; and Doc. 1485, paras. 5 - 7).

42. Triangular Transactions

Several times during the period under review the Committee discussed special problems presented in the operation of the IC/DV system in cases involving "triangular" or "merchandising" transactions. "The Committee recognised that a greater degree of responsibility fell on the country issuing the Import Certificate in such cases, since the exporting country had to rely to a considerable extent on the Import Certificate". The Committee recommended that in such cases, the Import Certificate should bear a distinctive marking (a triangular symbol); the importance of requesting delivery verifications in respect of triangular transactions was also emphasized. (COCOM Doc. 1517, para. 41).

43. Penalties

The question of penalties to be invoked against individuals in Participating Countries who misuse the IC/DV system was examined. Although there was no agreement that a common minimum should be adopted, the importance of appropriate enforcement action was emphasised. (See COCOM Doc. 1214; 1279, paras. 51 - 52, and Annexes A and B; and Sub-C (53) 54).

44. Third Countries

During the period under review the Committee agreed that the IC/DV scheme should be extended to Austria. The Government is now using a modified form of the standard COCOM Import Certificate, para. 31). Action was taken to extend the scheme to Switzerland, or cooperation with several other countries. (See COCOM 1460, 1473, and 1340, paras. 3 and 32).

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Miscellaneous

In addition to the points outlined above, the Committee also took a large number of miscellaneous points arising from, and directly or indirectly related to, the operation of the IC/DV system. These included, among others, such things as exchanges of information concerning operation of the scheme in various countries, exchanges of lists of export licences issued against Import Certificates, exchanges of information concerning legislation affecting the scheme in various countries, and information concerning specific enforcement cases.

(d) International Watch List

References : COCOM Docs. 1220, 1273, 1328, 1351; C.G. Paper IX, para. 74; C.G. Paper XI, para. 51.

46. At the Consultative Group meeting on the 15th May 1953, the United States Delegation urged (C.G. Paper XI, para. 51) that the Coordinating Committee should renew their efforts to reach agreement as to the establishment of a Watch List along the lines laid down in para. 74 of C.G. Paper IX. In pursuance of the Consultative Group's directives referred to, the Committee examined the question further, and a number of suggestions were put forward in an attempt to meet the practical and legal difficulties confronting several Delegations. The outcome of these discussions was as follows :

- (a) Two Governments (France and Canada) objected to the development of an International Watch List or other surveillance procedure. The other Governments were prepared to consider any further suggestions that might be put forward. The German Government's willingness to proceed was in relation to an informal system (see sub-para. (c) below). Provision for the parent Government's exclusive right to submit names of its own nationals was stressed by some Delegates as an essential element of any procedure which might be developed.
- (b) Were the matter to be pursued, there were no objections to the procedural approach of dividing the matter into two aspects ("Exchanging information" and "prosecutionary action").
- (c) An informal technique (more particularly, an informal sub-committee) for producing names of traders - written or orally - for surveillance purposes could overcome the German Government's previous objections to a formal list.
- (d) Except for Japan, all Member Governments represented at the meeting had some kind of existing procedure under which significant information on individual traders was accumulated and kept in mind by licensing officers.
(COCOM Doc. 1351, with Corrigendum and Addendum)

47. In view of the objections raised by some Governments in these and the previous discussions (recorded in COCOM Doc. 1328), the Chairman concluded that no agreement was possible in the establishment of (a) an International Watch List, (b) a substitute arrangement for exchanging information through an informal sub-committee, or (c) the related, but distinct, suggestion for a centralised mechanism for dealing with "spot" diversion cases, as had been proposed so far. In the circumstances, he could only report to the Consultative Group that the Committee had been unable to comply with the directives of the Consultative Group, set out in paras. 74 - 76 of C.G. Paper IX (COCOM Doc. 1351, paras. 13 & 14).

On the 29th September, the United States Delegation stated that it would be willing to accept the opportunity of making a statement at the next meeting of the Consultative Group (COCOM Doc. 1356). In

In answer to these questions, he wished to state that (a) his Government considered the development of an International Watch List procedure or some mutually acceptable substitute to be an important matter (as his Delegation had stressed at the May 1953 C.G. Meeting); (b) the Committee's discussions might be facilitated by separating the subject into two aspects ("exchange of information" and "protectionary action"); (c) if an informal technique would overcome the objections raised by some Governments, the United States would be willing to consider a plan developed on that basis; (d) the United States considered that protectionary measures, reflecting the security objectives, should be applied with respect to security risks, and, for its own part, maintained a confidential record of traders which entered into the operation of the United States export control system; (e) a centralised mechanism to deal with "spot" diversion cases would be useful, first, to alert Governments and coordinate ad hoc protective steps in at least some cases (particularly those involving more than two Governments) and, secondly, to provide a practical basis for appraising the efficiency of existing control measures and considering steps to plug loopholes. With respect to the second purpose, the United States Delegate stated that it could be considered a logical and practical extension of the idea contained in a previous agreement in which the Committee on the basis of a United Kingdom proposal arising in discussions on the adequacy of the IC/DV system had "affirmed its determination to make full use of the Paris Group and its facilities for the exchange of information about methods employed to divert exports of strategic goods to the Soviet Bloc". - Docs. 1116, paras. 17, 31; Sub-C(53) 23; Doc. 1142, paras. 11 and 12.